CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 31

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY, PETITIONER,

vs.

CITY OF AVON PARK, FLORIDA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 15, 1940.

CERTIORARI GRANTED APRIL 22, 1940.

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ON AUGUST 15, 1938, the City of Avon Park filed its original Petition for the composition of its debts. Additional exhibits in the same form as Exhibit D 1 were filed by other consenting creditors and all such exhibits are omitted herefrom as they are similar to D 1. Said Petition and exhibit were in the following form, to-wit:

PETITION FOR COMPOSITION OF DEBTS UNDER SECTIONS 81, 82, 83 AND 84, OF CHAPTER IX, OF THE ACTS OF CONGRESS RELATING TO BANKRUPTCY OF AVON PARK, FLORIDA, A MUNICIPAL CORPORATION.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF FLORIDA. TAMPA DIVISION.

Copy.

IN THE MATTER OF:

CITY OF AVON PARK, FLORIDA, DEBTOR.

No. 3088-T-BANKRUPTCY.

In proceedings for Composition of Debts under Sections 81, 82, 83 and 84, of Chapter IX, of the Acts of Congress relating to Bankruptcy.

Comes now the City of Avon Park, a municipal corporation, and respectfully represents as follows:

(1) That petitioner is a municipality created and now existing under and by virtue of Chapter 12,514, Laws of Florida, Special Acts of 1927, and acts amendatory there-

of and supplemental thereto, and is a municipality within the meaning of Section 81, of Chapter IX, of the Acts of Congress relating to bankruptcy, and is entitled to file a petition thereunder in order to effect a plan of composition of its debts.

(2) That petitioner is located within the territory and jurisdiction of the United States District Court for he Southern District of Florida, Tampa Division.

(3) That petitioner is indebted on account of the unpaid principal and interest evidenced by its outstanding bonds and interest coupons and interest on bonds not represented by coupons or judgments on bonds and coupons and interest thereon, as in this paragraph set out. That prior to the creation of petitioner, City of Avon Park, under and by virtue of Chapter 10,320, Acts of 1925, and Chapter 12,514, Acts of 1927, a municipality known as "Town of Avon Park" existed and exercised jurisdiction over a portion of the territory now included within the City of Avon Park, petitioner herein,
2 the said Town of Avon Park having been created by and having existed under and by virtue of Chapter 6662 of the Laws of Florida; that the portion of the territory of petitioner, City of Avon Park, included within the Town of Avon Park consisted of about three (3) square miles; that during the existence of said municipality, Town of Avon Park, bonds of said town were issued, the outstanding portions of said bonds being described as follows, including the name of the issue, the date thereof, the principal amount outstanding, both matured and unmatured, and the interest on the said bonds, whether represented by coupons or not, up to and inclusive of July 1, 1937, to-wit:

Name of Issue	Date of Issue	Principal Amount Outstanding Matured	Unmatured	Interest Accrued to 7-1-1937, whether represented by coupons or not
Street Bonds	6/1/16	None	$30,000	$10,150.00
Street Bonds	11/1/20	None	16,500	6,645.00
Street Bonds	5/1/22	None	47,000	18,560.00
Refunding Bonds..	5/1/22	None	10,000	4,300.00
Park Improvement Bonds	5/1/22	None	5,000	2,300.00
Street Improvement Bonds	1/1/24	$22,000	None	9,330.00
Street Improvement Bonds	1/1/25	6,000	None	2,760.00
Improvement Bonds, Issue of 1925....	5/1/25	30,000	158,000	61,760.00
Refunding Bonds, Issue of 1925....	5/1/25	11,000	27,000	29,360.00
Totals		$69,000	$293,500	$145,165.00

That by virtue of the issuance of the said bonds pledging the full faith and credit of the then Town of Avon Park, the territory included in the said town as it then existed became subject to taxation to pay the principal and interest of said bonds; that for purposes of convenience the bonds above described, the principal and interest of which are payable from taxation upon territory included within the original Town of Avon Park, will be classified and in these proceedings hereafter referred to as "Class A Bonds," and the territory originally included within said Town of Avon Park will be referred to as "Zone A."

That the Legislature of the State of Florida, Session of 1925, by Chapter 10,320, Special Laws, abolished the Town of Avon Park and created in its stead a new munici-

pality known as "City of Avon Park," which included all of the territory of the Town of Avon Park, and in addition thereto, territory to the extent of approximately thirty-three (33) square miles. That during the time said Chapter 10,320 was in force and effect, the City of Avon Park issued other bonds, the name, date of issue, principal amount outstanding (both matured and unmatured), and the interest accrued to July 1, 1937 (whether represented by coupons or not), of the said issues being, respectively, as follows:

Name of Issue	Date of Issue	Principal Amount Outstanding Matured	Unmatured	Interest Accrued to 7-1-1937, whether represented by coupons or not
Street Improvement Bonds	12/1/25	$58,000	None	$24,560.00
General Improvement Bonds	10/1/26	None	$323,000	137,205.00
Street Improvement Bonds	5/1/27	36,000	None	15,230.00
Refunding Bonds	1/1/29	20,000	68,000	38,430.00
Totals		$114,000	$391,000	$215,425.00

For purposes of convenience, the territory annexed by said Chapter 10,320 will be hereinafter in all proceedings in this cause referred to as "Zone B," and the bonds of the City of Avon Park issued after the acquisition of said territory in "Zone B" will be hereafter in all
4 proceedings referred to as "Class B Bonds."

Thereafter, and during the session of the Legislature of the State of Florida of 1927, Chapter 12,514, Special Acts, was passed abolishing the old City of Avon Park created by Chapter 10,320, and creating a new municipality to be known as "City of Avon Park," with the same

described territory as that set out in Chapter 10,320, Acts of 1925, and in said Chapter 12,514 it was provided in Section 3 thereof that the payment of all bonds issued by the municipality of the Town of Avon Park prior to January 1, A. D. 1926, "shall be restricted to the property lying within the original limits of said municipality, and the property lying beyond said limits and now included within the limits of the municipality hereby created shall not be taxed for or required to pay any portion of said bonds issued by the municipality of the Town of Avon Park prior to the first day of January, A. D. 1926."

That all of the said indebtedness evidenced by the said issues of bonds constitutes general obligations of the petitioner payable by the levy of ad valorem taxes to be levied on all taxable property within the corporate limits of petitioner, limited only as to the liability of certain of the territory hereinbefore described for the respective issues of bonds hereinbefore set forth, in accordance with the present Charter of the City of Avon Park, although certain of said bonds are, in addition, payable from certain special assessments. Then an amount in excess of $185,000.00 principal of said bond issues above mentioned has matured and become payable previous to the date of the filing of this petition, and petitioner is in default in the payment of the same, said default having continued for more than seven years last past; that in addition thereto petitioner is in default in the payment of interest on its said bonded indebtedness in an amount exceeding $375,000.00 as of the date of the filing of this petition; that petitioner is therefore in default at the time of the filing of this petition in a total amount in excess of $550,000.00 representing matured principal of said bonds and interest represented by interest coupons and interest not represented by interest coupons, all of which amounts are immediately due and payable.

(4) That during the years 1926 to 1937, inclusive, the amounts collected by your petitioner from taxes levied for the purpose of paying principal and interest on said outstanding obligations, including the amounts collected on special assessments levied to pay some of said bond issues, have been insufficient to provide for the payment of the principal and interest of all of said obligations as the same matured. That the following is a statement of the amount of taxes levied and collected by petitioner in each of the several years, 1926 to 1937 both inclusive, for the payment of such principal and interest and for the operating costs of said city, together with the amount of taxes still delinquent:

Tax Year	Total Levy	Amount Collected	Amount Delinquent
1926	$111,116.35	$102,994.95	$ 8,121.40
1927	99,910.22	90,465.60	9,444.62
1928	98,722.16	80,784.06	17,938.08
1929	67,756.06	57,143.37	10,612.69
1930	56,979.33	45,737.18	11,242.15
1931	54,992.77	45,273.91	9,719.06
1932	60,948.36	46,379.59	14,568.77
1933	87,820.89	64,394.06	23,426.82
1934	73,679.44	64,838.72	8,840.72
1935	57,238.83	42,787.61	14,451.22
1936	104,999.52	36,004.55	68,994.97
1937	70,464.50	26,879.30	43,583.20

That petitioner has foreclosed real estate for taxes during said period amounting to $206,696.79, and in showing the amounts of taxes collected the said sum of $206,696.79, although represented by real estate, is shown as
6 taxes collected in the above table.

That the assessed valuation of all of the taxable property located within the city limits of your petitioner and sub-

ject to taxation for the payment of principal and interest of said bonded debt has steadily decreased for the last several years. That the following table shows the tax valuation for the years 1926 to 1937, both inclusive, indicating said decrease:

Year.	Assessment Roll.
1926	$6,536,256
1927	9,814,220
1928	7,541,040
1929	5,942,633
1930	6,128,900
1931	3,981,269
1932	3,869,107
1933	3,219,638
1934	1,998,456
1935	2,841,451
1936	2,748,953
1937	2,504,087

That since your petitioner became in default in the payment of its bonded debt its governing authority has made due and diligent efforts to collect the taxes levied for the purpose of paying such principal and interest on said outstanding bonded indebtedness, but has been unable to do so, except as hereinbefore shown, because of the said decrease in said property values and in the income of the taxpayers of the city which has been occasioned in part by the national financial depression and in part by the peculiar conditions obtaining in the City of Avon Park. That it is impracticable to attempt to levy sufficient taxes to meet said delinquencies in principal and interest of the outstanding indebtedness of your petitioner and to meet the accruing maturities of principal and interest in the next several years, and that it would be impossible to collect the same if taxes were levied in such amounts.

7

(5) That your petitioner desires, therefore, to effect a plan of composition involving all of its bonded indebtedness aggregating $867,500.00 in principal amount as described in Paragraph (3) hereof outstanding as of July 1, 1937, and all interest coupons appertaining thereto, together with all accrued interest on said bonds not represented by coupons and all judgments rendered on any of the said bonds or coupons or interest not represented by coupons; that your petitioner has therefore adopted and now files and submits herewith a plan of composition hereinafter mentioned affecting all of the aforesaid indebtedness, a copy of which plan of composition is hereto attached, marked "Exhibit A," and incorporated herein by reference as fully as though set out at length.

(6) That the said plan of composition is embodied in that certain agreement made and executed July 17, 1937, by and between R. E. Crummer & Company, a Delaware corporation with its principal office at Orlando, Florida, as party of the first part, and your petitioner, City of Avon Park, as party of the second part; that said agreement constitutes all of the understandings, agreements and plan of settlement of the bonded debt of your petitioner subsisting between your petitioner and the said R. E. Crummer & Company, and that there are no undisclosed understandings or agreements between your petitioner and the said R. E. Crummer & Company, and that the said agreement constitutes the sole and exclusive plan of settlement of your petitioner's outstanding bonded indebtedness included and referred to therein. That there is attached hereto, marked "Exhibit B" and made a part hereof, a true copy of the said agreement, together with a copy of an excerpt from the minutes of the meeting of the City Council of the City of Avon Park adopting and approving the said contract.

8

(7) That at a meeting of the City Council of the City of Avon Park held on August 12th, A. D. 1938, said City Council adopted a resolution authorizing the filing of this petition, pursuant to the aforesaid sections of the National Bankruptcy Act, and pursuant to Chapter 15,878, Laws of Florida, Acts of 1933, a true copy of said resolution being attached hereto and marked "Exhibit C," and made a part hereof.

(8) That the governing authority of your petitioner has heretofore outlined and legally adopted a plan for the composition of its debts hereinbefore referred to, a copy of which is attached to this petition and made a part hereof as "Exhibit A," and has submitted the same to its creditors; that the creditors referred to in this petition are the creditors of your petitioner owning the bonds of said city and interest coupons thereof, and do not include the holders and owners of any other indebtedness of said city; that under said plan of composition said city's adjustment of its indebtedness is to be based upon the principal amount of its bonds and principal amount of its said interest coupons and past due interest not represented by coupons due and unpaid to and including July 1, 1937, including said bonds and interest coupons that have been reduced to judgments; that all interest coupons are to be surrendered under said plan, whether due on or before or after said July 1, 1937, and that the bonded indebtedness of your petitioner referred to in this petition includes the said two sums hereinbefore set forth, viz., $867,500.00 principal and $350,590.00 interest.

(9) That creditors of your petitioner holding securities to the amount of $546,500.00 of the principal or face amount of said bonds, and holding and owning
9 coupons thereof, or interest not represented by coupons due up to and including July 1, 1937, in the amount of $176,986.66, face amount of said coupons

or interest, have accepted in writing said plan of composition of your petitioner's debts, and their written acceptances are hereto attached as "Exhibit D-1," to "Exhibit D-43," both inclusive, for identification, and the same are made a part hereof the same as though set forth in full herein; and that the said written acceptances constitute and are acceptances by creditors of your petitioner owning and holding more than 51 per centum in amount of the securities affected by the plan of composition, exclusive of any such securities owned, held or controlled by your petitioner, and that your petitioner does not own, hold or control any of the said securities.

(10) That a list of all known creditors of your petitioner, together with their addresses, so far as are known to your petitioner, and description of their respective securities, is hereto attached and made a part hereof, the same as if set forth in full herein, and marked "Exhibit E" for identification, said list showing separately those creditors who have accepted the said plan of composition on the first 9 pages thereof, and said list showing separately each of the respective bond issues of your petitioner, or securities of your petitioner, affected by said plan of composition, the last 13 pages of said "Exhibit E" containing separately a list of all known bondholders or security holders of your petitioner affected by said plan of composition who have not accepted said plan, showing their names, together with their separate addresses and a description of the respective securities held by them so far as your said petitioner is able to describe said securities. That none of the bond issues of your petitioner are registered, and for that reason petitioner cannot describe the securities held by said bondholders who have not accepted said plan other than as holding said bonds of your petitioner in certain principal amounts, together with said coupons thereon, your petitioner being unable to state specifically which

particular issues of bonds the respective bonds and coupons are parts of. That on account of said bonds not being registered, your petitioner does not have and cannot obtain full, accurate and complete information as to the owners of all of its said bonds; that included in said list of bondholders who have not accepted said plan are some persons and parties owning bonds or securities the amounts of which are unknown to your petitioner.

(11) That prior to the filing of this petition judgments, writs or decrees as hereinafter fully described have been awarded against your petitioner in the District Court of the United States, for the Southern District of Florida, and in the Circuit Court of the Tenth Judicial Circuit in and for Highlands County, Florida, within which your petitioner is located, said judgments, writs or decrees and the Courts in which the same were awarded being as follows, to-wit:

In the District Court of the United States, for the Southern District of Florida, Tampa Division, as follows:

Lawrence W. Rittenoure vs. City of Avon Park, No. 3371-T-Civil, Final Judgment for $63,352 and Costs of $12.22, awarded ....., 1936, and alternative writ of mandamus issued thereon June 19, 1936;

Security Benefit Association vs. City of Avon Park, No. 3350, Final Judgment for $13,294.40 awarded October 11, 1935, and peremptory writ of mandamus issued January 22, 1937. No return to said writ;

United Mutual Life Insurance Company vs. City of Avon Park, No. 3349-T-Civil, Final Judgment for $13,942.50 awarded October 1, 1935, and peremptory writ of mandamus issued January 22, 1937, for millage sufficient to pay said judgment;

William E. Sweet vs. City of Avon Park, No. 5387 Final Judgment for $9,952.80 awarded December
11 16, 1935, and peremptory writ of mandamus issued January 22, 1937;

Roger W. Babson vs. City of Avon Park, No. 3137-T-Civil, Final Judgment for $6,114.82, plus $17.62 costs, awarded May 30, 1933, and peremptory writ of mandamus issued March 15, 1937;

Vermont Investment Company vs. City of Avon Park, No. 3451-T-Civil, Final Judgment for $34,606.40, plus costs of $17.58, awarded June 4, 1936, and writ of mandamus issued September 10, 1936;

Women's Benefit Association vs. City of Avon Park, No. 3351-T-Civil, Final Judgment for $29,090.00, plus $12.18 costs, awarded August 2, 1935, and writ of mandamus issued for the levy of 3½ mills on the 1935-1936 tax roll.

And in the Circuit Court of the Tenth Judicial Circuit of Highlands County, Florida, as follows:

Gulf Life Insurance Company vs. City of Avon Park, No. ....., Final Judgment for $2,847.67, plus $10.50 costs, awarded April 12, 1934;

Charles B. Prettyman, et al., as Trustees, vs. City of Avon Park, No. ....., Final Judgment for $9,778.66, plus costs of $10.75, awarded October 20, 1933, and writ of mandamus issued November 6, 1933, requiring a tax levy to pay said judgment;

First National Bank of Gainesville vs. City of Avon Park, No. ....., Final Judgment for $6,610.53, plus $12.25 costs, awarded November 10, 1932;

First National Bank of Gainesville vs. City of Avon Park, No. ....., Final Judgment for $5,421.24, plus $11.60 costs, awarded April 18, 1933.

That the securities involved in a number of the foregoing writs, judgments and decrees have already accepted the plan of composition hereinbefore described, but in the case of others the said writs, judgments or decrees are in full force and effect, and pending the final determination hereof an interlocutory order ought to issue staying and enjoining the continuation of the said writs, judgments and decrees, as the case may be, and placing temporarily in operation the plan of adjustment herein set out and provided for.

12 (12) That said plan of composition is fair and equitable and for the best interests of the creditors of your petitioner, and does not discriminate unfairly in favor of any creditor or class of creditors; that if the same is accepted and approved your petitioner will be able to meet the interest and sinking fund requirements of the said refunding bonds to be issued under said plan as the tax requirements to pay the same are so materially reduced from the present tax requirements as to be fair, reasonable and just and the taxpayers of your petitioner will be able to and will pay the taxes levied and assessed by your petitioner.

Wherefore, your petitioner prays that the Judge of said Court will enter an order approving this petition as properly filed under said amendment to the National Bankruptcy Act, to-wit, Sections 81, 82, 83 and 84, inclusive, of Title 11, U. S. C., and further ordering and adjudging that said petition complies with said Bankruptcy Act and has been filed in good faith; and also entering an order fixing the time and place for a hearing on said petition, said hearing to be held within ninety

(90) days from the date of said order, and prescribing the form of notice to be given to the creditors of your petitioner affected by said plan, specifying the manner in which claims and interests of creditors shall be filed in evidence on or before the date fixed for the hearing; and ordering and directing said notice to be published once a week for three successive weeks in at least one newspaper of general circulation published within the jurisdiction of the Court, and in such other paper or papers having a general circulation among bondholders and bond dealers as may be designated by the Court, and ordering a copy of said notice to be mailed, postage prepaid, to each creditor of petitioner named in the petition at the address of such creditor given in the petition and
13 order,—said notice to be first published and the mailing thereof completed at least sixty (60) days before the date fixed for the hearing; that petitioner's plan of composition of its debts be finally approved and confirmed; that such hearings be had thereon and notices thereof given, and such proceedings be had and taken hereunder as are authorized and required by said Bankruptcy Act. That pending determination of the matter the Court enter an interlocutory decree providing that the plan of composition shall be temporarily operative with respect to all securities affected by the plan, and with respect to settlement, adjustment and collection of taxes and assessments affected by said plan, and that the payment of both principal and interest of the said securities shall be temporarily postponed,—i. e., such as have become due or which would otherwise become due, but that the same shall not become due and payable and the payment thereof be postponed during the period in which said decree shall remain in force; and that upon notice, the Judge enjoin and stay or dissolve, pending the determination of this matter, the operation and effect of the decrees, writs and judgments hereinbefore specifically

described and set forth; and for such other and further orders and decrees proper to be had in the premises.

CITY OF AVON PARK,
By R. F. SAPPINGTON,
Its Mayor Pro Tem.

Attest:

D. F. CANFIELD,
(Seal) Acting City Clerk.

T. A. McNICHOLAS,
HENRY L. JOLLAY,
Attorneys for Petitioner.

14 State of Florida,
County of Highlands.

R. F. Sappington, of lawful age, being duly sworn, says that he is Mayor Pro Tem of the City of Avon Park, Florida, the above named petitioner; that he has read the above and foregoing petition, and makes this verification for and on behalf of said petitioner and as such officer thereof; and that the allegations and statements therein contained are true.

(Signed) R. F. SAPPINGTON.

Subscribed in my presence and sworn to before me this 12th day of August, A. D. 1938.

(Signed) J. C. RAGSDALE,
Justice of the Peace, District
(Seal) One, Highlands County, Fla.

15 EXHIBIT A.

Refunding Plan
of City of Avon Park, Florida.

Section 1. Indebtedness of the City of Avon Park proposed to be affected by the provisions of this Refunding Plan comprises (a) all outstanding principal bonded indebtedness; (b) all accrued interest on the bonds proposed to be refunded hereunder to the date of the proposed Refunding Bonds, whether evidenced by matured interest coupons, or otherwise; and (c) bonds and coupons upon which judgments have been obtained against the City of Avon Park, which items are proposed to be refundable as if such judgments had not been obtained. The said indebtedness proposed to be refunded is more particularly described as follows:

Name of Issue	Date of Issue	Principal Amount Outstanding as of 7-1-37 Matured	Unmatured	Total Interest to 7-1-37
Street Bonds	6-1-16	None	$30,000	$10,000
Street Bonds	11-1-20	None	16,500	7,000
Street Bonds	5-1-22	None	47,000	19,000
Refunding Bonds	5-1-22	None	10,000	5,000
Park Improvement Bonds	5-1-22	None	5,000	3,000
Street Improvement Bonds	1-1-24	22,000	None	10,000
Street Improvement Bonds	1-1-25	6,000	None	3,000
Improvement Bonds, Issue of 1925	5-1-25	30,000	158,000	62,000
Refunding Bonds, Issue of 1925	5-1-25	11,000	27,000	30,000

(Bonds and interest accruals of the above described issues are proposed to be refunded by Series A and Series AA Refunding Bonds.)

Name of Issue	Date of Issue	Principal Amount Outstanding as of 7-1-37 Matured	Unmatured	Total Interest to 7-1-37
Street Improvement Bonds	12-1-25	58,000	None	25,000
General Improvement Bonds	10-1-26	None	323,000	138,000
Street Improvement Bonds	5-1-27	36,000	None	16,000
Refunding Bonds	1-1-29	20,000	68,000	39,000

(Bonds and interest accruals of the issues next above described are proposed to be refunded by Series B Refunding Bonds.)

Section 2. There has been legally authorized and the City of Avon Park proposes to issue general obligation Refunding Bonds of the City of Avon Park con-
16 taining a pledge of the full faith and credit of the City of Avon Park, said bonds to be in an aggregate principal amount equal to the principal amount of the City of Avon Park bonds (outstanding as of July 1, 1937) and all interest accrued thereon to July 1, 1937. Refunding Bonds will be deposited in escrow with The First National Bank of Chicago, Chicago, Illinois, and those prepared for exchange for the principal amount of the outstanding indebtedness will be subject to delivery to the holders of the securities proposed to be refunded in exchange therefor on the basis of par for par while Refunding Bonds prepared for exchange for the interest accrued to July 1, 1937, will be delivered to R. E. Crummer & Company, Fiscal Agent, from time to time as said R. E. Crummer & Company assembles the said evidences of the interest accruals in blocks of One Thousand Dollars ($1,000.00), or multiples thereof.

Section 3. Refunding Bonds proposed to be issued will be dated July 1, 1937, mature July 1, 1967, and bear interest, payable semi-annually, at the following rates:

Two percent (2%) per annum for a period of two (2) years from the date thereof;

Three percent (3%) per annum for the next succeeding six (6) years;

Four percent (4%) per annum for the next succeeding seven (7) years;

Five percent (5%) per annum thereafter.

Section 4. Refunding Bonds proposed to be issued will be callable at par upon any interest payment date prior to maturity. If the option to call the Refunding Bonds prior to maturity is used, provision is made that it will be exercised in the following manner:

The Refunding Bonds shall be drawn by lot from all of the ten outstanding Refunding Bonds. Notice of redemption, specifying the Refunding Bonds called, shall be filed at the place where the principal and interest of said Refunding Bonds are payable at least thirty (30) days prior to such redemption date. Notice of intention to redeem said Refunding Bonds shall be published once, not more than sixty (60) days, nor less than thirty (30) days prior to the redemption date, in at least two (2) publications, one of which shall be a newspaper having general circulation in Avon Park, Highlands County, Florida, and the other shall be a financial journal published in the City of New York, State of New York.

Section 5. In view of the fact that the City of Avon Park had boundary changes twice during the time it was issuing bonds and in view of the fact that Refunding Bonds can only be issued as continuations and extensions of original obligations, it has been necessary to provide for the issuance of the proposed Refunding Bonds in two

major series, namely, "A" and "AA" in one group and "B" in the other group. The original bonds proposed to be refunded by the respective series of Refunding Bonds are indicated in Section 1 hereof.

The above facts have necessitated the creation of separate interest and sinking fund tax levies for the two major series, and, in order that the full scope of these two separate provisions may be known, the applicable sections of the resolution adopted by the City Council of the City of Avon Park authorizing the issuance of the proposed Refunding Bonds are quoted in full as follows:

"That for the purpose of adequately providing for the payment of the interest coupons and for a sinking fund for the retirement of the said Series "A" and Series "AA" Refunding Bonds herein authorized to be issued, the said City hereby covenants and agrees with the holders of said Refunding Bonds that in the annual budget and ad valorem tax levy to be prepared and made in each of the years 1937 and 1938, there shall be included a levy of a current ad valorem tax on all property within the original area of said City, as defined by Chapter 6,662, Laws of Florida, Acts of 1913, subject to the levy and collection of such tax, sufficient to produce annually the sum of Ten Thousand Dollars ($10,000.00), including and deducting therefrom at the option of said City, any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose; that in the annual budget and ad valorem tax levy to be prepared and made in each of the years 1939 to 1944, both years inclusive, there shall be included a levy of a current ad valorem tax on all property within the said territorial limits of said City as hereinabove in this paragraph identified, subject to the levy and collection of such tax, sufficient to produce annually the sum of Fifteen Thousand

Dollars ($15,000.00) including and deducting therefrom, at the option of said City, any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose; that in the annual budget and ad valorem tax levy to be prepared and made in each of the years 1945 to 1951, both years inclusive, there shall be included a levy of a current ad valorem tax on all property within the said territorial limits of said City as hereinabove in this paragraph identified, subject to the levy and collection of such tax, sufficient to produce annually the sum of Twenty Thousand Dollars ($20,000.00) including and deducting therefrom at the option of said City any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose; that beginning with the annual budget and tax levy to be made in the year 1952 and continuing each year thereafter until all of said Refunding Bonds, Series "A" and Series "AA", and the interest thereon, have been retired, the annual interest and sinking fund current ad valorem tax levy shall be sufficient to produce not less than $30,000.00, including and deducting therefrom any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose.

"That for the purpose of adequately providing for the payment of the interest coupons and for a sinking fund for the retirement of the said Series "B" Refunding Bonds herein authorized to be issued, the said City hereby covenants and agrees with the holders of said Refunding Bonds that in the annual budget and ad valorem tax levy to be prepared and made in each of the years 1937 and 1938, both years inclusive, there shall be included a levy of a current ad valorem tax on all property within the area of said City as defined by Chapter 10,320, Laws of Florida, Special Acts of 1925, and Chapter 12,514, Laws of Florida,

Special Acts of 1927, subject to the levy and collection of such tax, sufficient to produce the annual amount of Thirty Thousand Dollars ($30,000.00), including and deducting therefrom, at the option of said City, any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose; that in the annual budget and ad valorem tax levy to be prepared and made in each of the years 1939 to 1944, both years inclusive, there shall be included a levy of a current ad valorem tax on all property within the said territorial limits of said City as hereinabove in this paragraph identified, subject to the levy and collection of such tax, sufficient to produce annually the sum of Twenty-five Thousand Dollars ($25,000.00) including and deducting therefrom, at the option of said City, any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose; that beginning with the annual budget and tax levy to be made in the year 1945 and continuing each year thereafter until all of said Refunding Bonds, Series "B", and the interest thereon, have been retired, the annual interest and sinking fund ad valorem tax levy shall be sufficient to produce not less than Twenty Thousand Dollars ($20,000.00), including and deducting therefrom any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose.

"All such taxes shall be levied and computed upon the extended and finally equalized valuation of all property within said City as constituted at the time of the issuance of the respective issues of bonds refunded hereby, except only such property as was exempt from taxation under the laws and Constitution of Florida which were in force and effect at the time of the creation of the indebtedness proposed to be refunded hereunder. The taxes so levied shall be in addition to all other taxes by

or on behalf of said City, and the proceeds thereof are hereby appropriated and shall be used exclusively for the purpose for which the same are levied, and so long as any of said Refunding Bonds are outstanding, the respective annual tax levies shall be increased when necessary to provide sufficient funds for the actual interest and principal or sinking fund requirements of the year next succeeding that in which the budget is being made and prepared."

A provision is also included that, in case of failure or refusal of the City of Avon Park to perform any agreements or obligations to the holders of the said Refunding Bonds, or upon default in the payment of interest, the said City of Avon Park will have a period of six (6) months within which to correct the same, and upon the inability or refusal to do so within that period and upon the declaration in writing filed with said City of Avon Park by the holders of at least twenty-five per cent (25%) in principal amount of the Refunding Bonds then outstanding, all of said bonds will, at the option of the respective holders, revert to the original interest rate of the securities exchanged therefor, such reversion being effective from the date to which interest had been paid on the Refunding Bonds prior to the date of filing of the declaration of intention to exercise such option.

Section 6. Provision is made that, each six months after interest then due has been paid on said Refunding
19 Bonds and due allowance has been made for interest requirements due six months thereafter, making reasonable allowance for anticipated receipts, any surplus funds shall be used by the City of Avon Park for the purpose of purchasing for cancellation Refunding Bonds, which purchases are provided to be made in the following manner:

The City Council of the City of Avon Park shall designate a date, not less than thirty (30) nor more than forty-five (45) days from the time such date is designated, at which time the City Council will receive and consider in open session sealed offerings of said Refunding Bonds. The City Council shall give written notice of this date to any bondholders so requesting in writing. Notice of the time and place of receiving offerings shall be published once, not less than fifteen (15) days before the designated time, in at least two (2) publications, one of which shall be a newspaper having general circulation in the City of Avon Park, Highlands County, Florida, and the other shall be a financial journal published in the City of New York. All of the surplus funds available, as provided under the plan, shall be used to purchase bonds at the lowest offered price. If, however, the City Council shall be dissatisfied with any or all offers received, it shall have the option to reject any or all such offers, and, within thirty-one (31) days thereafter, readvertise for additional sealed offerings and purchase the bonds so readvertised for at the lowest offered prices to the extent of absorbing all funds available. It is further provided that, after each such advertised purchase, the City Council may privately purchase additional bonds with subseqent surplus accumulations, as long as private purchases may be made on such basis as to assure a higher income yield than the highest yield calculated on bonds purchased pursuant to advertisement.

Section 7. R. E. Crummer & Company has agreed with the City of Avon Park to defray all expenses involved in the following steps incident to the refunding:

1. Assembling the bonds proposed to be refunded;

2. Printing the Refunding Bonds;

3. Representing the City in legal proceedings to validate said Refunding Bonds;

4. Obtaining approving opinion of nationally recognized bond counsel upon the issuance and validity of Refunding Bonds, said counsel to be selected by said R. E. Crummer & Company;

5. All other expenses in connection with the refunding which may be approved by said R. E. Crummer & Company.

It is also provided in the plan that the City of Avon Park will retain counsel to represent it until the refunding proceedings have been completed, and R. E. Crummer & Company has agreed to indemnify the City of Avon Park for its costs in this connection, the total thereof to be in an amount to be agreed upon between the City of Avon Park and R. E. Crummer & Company.

Section 8. Provision is made that R. E. Crummer & Company shall be reimbursed for its services and costs incident to the refunding of the outstanding indebtedness of the City of Avon Park by assessing charges against the participating bondholders, the amount of such charges to be a matter between R. E. Crummer & Company and the bondholders participating in the plan. The charge has been set at $20.00 per $1,000.00 bond tendered for exchange, or ratable portion thereof in the case of bonds of less than $1,000.00 denomination.

Section 9. Provision is made that all taxes levied by the City for the year 1937, and subsequently, will be payable in legal tender only, but the City of Avon Park and R. E. Crummer & Company have agreed to cooperate in developing a reasonable course of procedure for the adjustment and collection of the reasonable maximum equity

of delinquent taxes for the years 1936, and prior, and special assessment liens, it being specifically agreed that for a period of twenty-four (24) months after the date of the first exchange of the said Refunding Bonds a par value of Refunding Bonds equivalent to the par value of Refunding Bonds issued for the purpose of refunding accrued interest will be kept available by R. E. Crummer & Company and held subject to the order of the City of Avon Park for use in paying taxes assessed by the City of Avon Park for the years 1936, or prior, or for the purpose of discharging any special assessment liens, and interest thereon, now outstanding and unpaid, said bonds to be delivered by R. E. Crummer & Company upon the order of the City of Avon Park at not exceeding fifty per cent (50%) of the face amount thereof for the first six (6) months; at not exceeding sixty per cent (60%) for the next succeeding six (6) months; at not exceeding seventy per cent (70%) for the next succeeding six (6) months; and at not exceeding seventy-five per cent (75%) for the next succeeding (6) months.

In view of the fact that the liquidation of the accumulated delinquent tax and special assessment items is an essential element in the complete rehabilitation of the bonded debt situation of the City of Avon Park, R. E. Crummer & Company proposes at the time of exchange to pay for all accrued interest to July 1, 1937, at the equivalent of a sum of money which would be payable if said interest accruals (coupons and accrued interest) evidenced interest at the rate of two (2%) per cent per annum, and will itself hold interest adjustment bonds available subject to use in the payment of delinquent taxes and special assessment liens, as hereinabove stated.

Dated this twenty-third day of April, 1938.

CITY OF AVON PARK,
FLORIDA.

21 EXHIBIT B.

Avon Park, Page 1.

PETITIONER'S EXHIBIT #3.

Minutes of Adjourned Regular Meeting,
July 17, 1937, 8:00 P. M.

Councilman Albert Garrett, F. S. Jordan and E. F. Sappington were present, and the meeting was called to order by Mr. Garrett who acted as chairman in the absence of W. T. Hall and President S. J. Pendleton.

The following Resolution was introduced and, upon being read in full, was, upon motion of F. S. Jordan, which motion was duly seconded by E. F. Sappington, adopted by the following vote:

Ayes: Albert Garrett, E. F. Sappington, F. S. Jordan.

Nayes: None.

Absent: W. T. Hall, S. J. Pendleton.

Not Voting: None.

Resolution.

Whereas, The City of Avon Park has long been in default with regard both to principal and interest of its bonded indebtedness.

And Whereas in the judgment of the Council it is necessary that the obligations of the City including bonded indebtedness, interest in default, judgments against the City, and all other debt service be refunded,

And Whereas R. E. Crummer & Company of Orlando, Florida, have from time to time conferred with the City concerning the refunding of the said debt service and have submitted to the City a contract whereby they agree to refund the same upon certain terms and conditions made in the said contract.

And Whereas the City Council is of the opinion that it is the benefit of the citizens and the taxpayers of the City of Avon Park, that the said contract be entered into and accepted by the City of Avon Park.

22 Be It Resolved by the City Council of the City of Avon Park, State of Florida, in session duly assembled:

Section 1. That this Council does hereby approve, adopt, and confirm that certain agreement set forth in Section 2 hereof: the President of the City Council and the Mayor of the City of Avon Park be, and they are hereby, directed to execute said agreement for and on behalf of the City of Avon Park, and the City Clerk be, and he is hereby, directed to attest the signature of said President and Mayor on said agreement and affix the seal of the City of Avon Park thereto.

Section 2. That the agreement approved, adopted, and confirmed in Section 1 hereof shall be as follows:

Agreement.

This Agreement, made and entered into this 17th day of July, A. D. 1937, by and between R. E. Crummer & Company, a Delaware Corporation with principal office at Orlando, Florida, (hereinafter sometimes referred to as "First Party" and sometimes referred to as "Fiscal Agent") and the City of Avon Park, Florida, (hereinafter some-

times referred to as "Second Party" and sometimes referred to as the "City".)

Witnesseth.

In consideration of the sum of one (1.00) Dollar paid by each of the parties hereto to each other, receipt of which is hereby mutually acknowledged, and in further consideration of the mutual benefits flowing to the respective parties hereto, it is hereby mutually understood and agreed as follows:

Section 1. That First Party shall endeavor to accomplish a refunding, by a par for par exchange, of the following refundable funded indebtedness (hereinafter referred to as "Bonds") in accordance with the terms and conditions hereinafter set forth:

23 (A) All outstanding principal of the funded indebtedness of the City of Avon Park, which is generally and approximately described as follows:

Date	Rate	Designation	Original Amount of Issue	Amount Outstanding
6-1-16	5%	Street Improvement.	$30,000.00	$30,000.00
11-1-20	6%	Street Improvement.	20,000.00	20,000.00
5-1-22	6%	Refunding	10,000.00	10,000.00
5-1-22	6%	Park Improvement..	5,000.00	5,000.00
5-1-22	6%	Street Improvement.	60,000.00	47,000.00
1-1-24	6%	Street Improvement.	70,000.00	9,000.00
1-1-25	6%	Street Improvement.	18,000.00	6,000.00
5-1-25	6%	General Improvement	240,000.00	188,000.00
5-1-25	6%	Refunding	40,000.00	38,000.00
12-1-26	6%	Street Improvement.	140,000.00	42,000.00
10-1-25	6%	General Improvement	355,000.00	323,000.00
5-1-27	6%	Street Improvement.	60,000.00	36,000.00
1-1-29	6%	Refunding	175,000.00	85,000.00

It is understood that the indebtedness to be considered hereunder will be the exact amount of indebtedness found to be outstanding and unpaid when the bond registers of the identified issues of bonds have been carefully balanced.

(B) All interest accrued and unpaid on the bonds identified in (A) of this Section to the date of the proposed Refunding Bonds, whether evidenced by matured interest coupons or by accrued interest on matured bonds. Refunding bonds allocated to be exchanged for evidences of accrued and unpaid interest shall be delivered as First Party is able to assemble said evidences in blocks of $1,000.00, the manner and method of assembling said evidences to be a matter wholly between First Party and bondholders participating in the plan outlined herein.

24 Section 2. That Second Party shall, by proper action, cause Refunding Bonds to be authorized and validated by the Circuit Court, or the Supreme Court of Florida, in the event of any appeal, in an amount sufficient to permit an exchange of securities on the basis of par for par, using such procedure and forms therefor as shall be approved by nationally recognized bond attorneys; that said Refunding Bonds shall be executed in the manner required by law and placed on deposit in escrow with a bank to be selected by First Party under instructions from Second Party, or its proper officials, that said Refunding Bonds shall be delivered in exchange for securities described in Section 1 hereof, this contract being sufficient authority for said officials to make said deposit under usual forms for the purpose, said forms to be prepared by First Party and approved by the attorney for Second Party.

Section 3. That said Refunding Bonds shall be dated July 1, 1937, and mature according to the following schedule: Thirty years after their date.

Section 4. That said Refunding Bonds shall bear interest, payable semi-annually, at the following rates:

Two (2%) percent per annum for the first two (2) years after date thereof; three (3%) per cent per annum for the next succeeding six (6) years; four (4%) percent per annum for the next succeeding seven (7) years; five (5%) per cent per annum thereafter.

Exception: Where any of the above annual interest rates exceed the annual interest rates on any particular bonds proposed to be refunded, the lower rate on said particular original bonds shall be the maximum rate on the particular Refunding Bonds exchanged therefor.

Section 5. (4) That all of said Refunding Bonds shall be callable at par plus accrued interest upon any interest payment date prior to maturity.

(B) That the option to call the Refunding Bonds prior to their respective maturity dates, if used, shall be exercised in the following manner:

(a) The bonds shall be drawn by lot by the governing authority of the Second Party;

(b) The respective lots shall consist of all of the then outstanding bonds;

(c) Notice of said redemption, specifying the bonds called shall be filed at the place of payment of the principal and interest of said Refunding Bonds at least thirty (30) days prior to the redemption date and notice of intention to redeem said bonds shall also be published once, not more than sixty (60) nor less than thirty (30) days prior to the redemption date, in at least two publications one of which shall be a newspaper having general cir-

culation in Avon Park, Florida, and the other shall be a financial journal published in the City of New York, New York.

Section 6. That, for the purpose of adequately providing for the payment of the interest on said Refunding Bonds as it matures and for the creation of a sinking fund for the retirement of all of said Refunding Bonds as they mature, the proceedings authorizing the issuance thereof shall:

(A) Conform to the tax provision requirements of Chapter 18,772 of the Laws of Florida, Acts of 1931. (C. G. L.-2383) and such other law or laws as shall be required by the approving bond attorneys provided for herein in order to accomplish the full purposes hereof;

(B) Contain legally effective obligations and covenants on the issuing taxing unit to and in favor of the holders of the Refunding Bonds that

(a) In the annual budgets to be prepared and made in each of the years 1937 to 1951, both inclusive, there shall be included an appropriation in an amount sufficient to produce a sum of Forty Thousand ($40,000.00) Dollars, including and deducting therefrom any revenue other than from ad valorem taxes which may be

(b) In the annual budgets to be prepared and made in the year 1952, and annually thereafter until all of said Refunding Bonds, and interest thereon, have been retired, there shall be included an appropriation in an amount sufficient to produce a sum of Fifty Thousand ($50,000.00) Dollars, including and deducting therefrom any revenue other than from ad valorem taxes which may be available and is actually so applied.

(C) Provision shall be made for the levying of an ad valorem tax in an amount sufficient to meet that portion of the respective annual appropriations which may be payable from ad valorem taxes, such taxes to be levied and computed upon the extended and finally equalized assessed valuation of property of the issuing unit, except only such property as was exempt from taxation at the time the original bonds proposed to be refunded were issued;

(D) The respective annual tax levies shall be increased when necessary to provide sufficient funds for the payment of the interest and principal maturities of the year next succeeding that in which any particular budget is being made and prepared;

(E) In the event of a failure or refusal of the governing authority of the issuing taxing unit to perform any of the obligations assumed thereunder to the holders of Refunding Bonds, or upon a default in the payment of interest on said Refunding Bonds, then upon the declaration in writing filed with Second Party, through its Clerk, by the holders of at least twenty-five (25%) per cent in principal amount of the Refunding Bonds outstanding upon the happening of such failure, refusal, or default, said Refunding Bonds shall, at the option of the respective holders, revert to the original interest rate of the securities exchanged therefor, but such reversion shall only be effective from the date to which interest had been paid on said Refunding Bonds prior to the date of the filing of the declaration of intention to
27 exercise such option, and if the right to the higher interest rate accrues, the higher rate of interest will be evidenced in the manner then provided by law; Provided, said bonds shall not revert to the original interest rate unless the failure, refusal, or default is not

corrected within a period of six (6) months after its happening.

Section 7. That Second Party shall take such action as may be necessary to consummate the refinancing program herein authorized to the end that the proceedings authorizing the issuance of the Refunding Bonds, or the Refunding Bonds themselves, shall—

(A) Be general obligations of the issuing taxing unit;

(b) Contain a pledge of the full faith and credit of said issuing taxing unit for the prompt payment of the principal and interest of said Refunding Bonds according to their tenor;

(C) Provide for payment in legal tender of the United States of all taxes provided to be levied for the payment of said Refunding Bonds and interest thereon;

(D) Be continuations, extensions, mergers, and renewals of the bonds proposed to be refunded;

(E) Provide that all rights and remedies which were available for the support and enforcement of the bonds proposed to be refunded will continue and remain available for the support and enforcement of the Refunding Bonds issued in lieu thereof;

(F) Provide for the holders of the Refunding Bonds to be subrogated to the rights of the holders of the bonds exchanged therefor if said Refunding Bonds should be held invalid or unenforceable.

(G) Provide that any surplus which may be available in the interest and sinking fund account of the issuing units each six months after pay-

ment of interest and principal then due (after making due allowance for interest and principal maturities due at the next semi-annual interest payment period and making reasonable allowance for anticipated receipts) shall be used by the governing authority of second party (hereinafter referred to as "governing authority") for the purpose of purchasing Refunding Bonds, said purchases to be made in the following manner:

(a) Within sixty (60) days after the surplus is ascertainable, the governing authority shall designate a date, which shall be not less than thirty (30) nor more than forty-five (45) days from the time such date is designated, at which time the governing authority will receive and consider in open session sealed offerings of Refunding Bonds herein authorized;

(b) The governing authority shall give written notice of this date to the Fiscal Agent, and any bondholders so requesting in writing;

(c) Notice of the time and place of receiving said offerings shall be published once, not less than fifteen (15) days before the designated time, in at least two publications, one of which shall be a newspaper having general circulation in Avon Park, Florida, and the other shall be a financial journal published in the City of New York, New York;

(d) All available funds, as hereinabove determined, shall be used to purchase bonds offered at the lowest prices;

(e) If the governing authority shall be dissatisfied with any or all offers received upon first advertisement, then it shall have the option to reject any or all such offers, and within thirty-one days after such rejection,

it shall readvertise for additional sealed offerings, whereupon the governing authority shall purchase the bonds offered at the lowest prices upon such readvertisement, absorbing all surplus funds available.

(f) After such advertised purchase, the governing authority may privately purchase, additional bonds with subsequent surplus accumulations as long as private purchases may be made on such basis as to assure a higher income yield than the highest yield calculated on bonds purchased pursuant to advertisement;

(g) If no offering can be obtained at or below the callable price, the governing authority shall proceed to call bonds to absorb the available surplus, said call to be effective at the next interest payment period after effort has been made to purchase bonds;

(h) At the option of the governing authority, purchases may be made to absorb surplus accumulations more often than required by the schedule set forth above.

Section 8. (A) That First Party shall defray all expenses incident to: (a) assembling the bonds herein proposed to be refunded; (b) printing the said Refunding Bonds; (c) the representation of Second Party in legal proceedings to validate said Refunding Bonds; (d) obtaining the approving opinion of nationally recognized bond counsel upon the procedure used for the issuance and validation of said Refunding Bonds, said counsel to be selected by First Party; (e) all other expenses in connection herewith which may be approved by First Party; (f) the cost of retaining special counsel to assist the City Attorney in determining the legal responsibility of the various properties which have at one time or another been

within the supposed corporate area of Avon Park, Florida, for debt service taxed, said special counsel to be selected by First Party.

(B) That, within one week from the date hereof, Second Party shall designate and retain counsel to represent it in all matters connected herewith until the purpose of this contract have been fulfilled, and first Party shall indemnify Second Party for its cost in this connection, the total cost thereof to be in an amount to be agreed upon between the First Party and the attorney selected by Second Party.

Section 9. That First Party shall be reimbursed and compensated for expenses incurred and services rendered, respectively, in connection herewith in the following manner:

By assessing charges against security holders who accept Refunding Bonds under the terms hereof, the amount of said charges being a matter wholly between First Party and security holders who accept said Refunding Bonds.

Section 10. That general provisions shall apply to this contract as follows:

(A) That, for a period of three years from date thereof, First Party is granted exclusive authority to act for and on behalf of Second Party in all matters connected with, or relating to, the exchange of the presently outstanding securities for Refunding Bonds, provided first Party had, within one year from date hereof, obtained the consent of the holders of seventy-five per cent, or more, of the bonds proposed to be refunded hereunder to participate in the plan of Refunding set forth herein.

(B) That any judgments entered on any securities subject to refunding hereunder shall be considered as subject to refunding as if said judgments had not been obtained.

(c) That, for a period of 24 months after date hereof, said First Party shall keep available a par value of bonds equal (pending completion of exchanges, coupons may be substituted) to the par value of Refunding Bonds authorized to be issued in exchange for evidences of accrued interest for the following purposes:

Said bonds shall be made available upon the order of Second Party for use in the payment of delinquent debt service taxes for the years 1935, or prior, or special assessment liens at the following percentages of the par amount thereof during the identified periods; 50% for the first six months; 60% for the next succeeding six months; 70% for the next succeeding six months; and 75% for next succeeding six months.

31 (D) That the parties hereto will jointly use their best efforts to induce holders of the presently outstanding bonds included within the scope hereof to participate in the refunding program set forth herein, and, until otherwise mutually agreed upon, subject to the limitations herein set forth, the plan herein set forth shall constitute the exclusive refunding program for said Second Party.

(E) That whenever and as often as the First Party shall request in writing to be informed as to the financial affairs of the Second Party, such as the amount of tax levies, collections, delinquencies, the amount of revenue and income available from sources other than from ad valorem taxes, the amount of bonds issued, outstanding or retired, to furnish such information promptly, and to give due consideration to any recommendations of the First Party with regard to such financial affairs.

(F) That, if, during the life of this contract, any of the outstanding bonds subject to refunding, or coupons appurtenant thereto or clipped therefrom, shall be presented for payment, or suit instituted thereon or in respect thereto, Second Party agrees that the First Party will be notified before any terms of settlement are agreed upon between Second Party and any such bondholder.

(G) That, if any portion of this contract shall be legally declared inoperative or void, said contract shall, at the option of First Party, be considered as fully operative without such inoperative or void portion.

In Witness Whereof, First Party has executed this instrument in duplicate, under its hand and seal, and Second Party has caused this instrument to be executed in duplicate in its name under due authority and has caused the same to be signed by the President of the City Council and Mayor of the City of Avon Park, and the seal of said City of Avon Park to be duly affixed hereto, attested by the City Clerk, all as of the
32 17th day of July, A. D. 1937.

R. E. CRUMMER & COMPANY,
(Seal) By R. E. CRUMMER, President,
First Party.

Attest:
E. RICHARDSON,
Secretary.

CITY OF AVON PARK,
FLORIDA,
(Seal) By S. H. PENDLETON,
President of the City Council,
By M. E. COVINGTON, Mayor,
Second Party.

Attest:
F. W. SHOCKLEY,
City Clerk.

Be It Further Resolved: That S. Colquitt Pardee be retained as counsel to represent the City in all Matters connected with said refunding program until the same shall have been completed; the appointment of said attorney being in accordance with Section VIII B of said Contract.

State of Florida,
County of Highlands.

The undersigned, City Clerk of the City of Avon Park of the County and State aforesaid, does hereby certify that the above and foregoing is true and correct copy of a resolution adopted by the City Council of said City on the 17th day of July, A. D. 1937.

Witness my hand and the seal of said City of Avon Park this 3rd day of August, A. D. 1937.

F. W. SHOCKLEY,
(Seal) City Clerk.

33 EXHIBIT C.

PETITIONER'S EXHIBIT #5.

Excerpt from Minutes of Regular Adjourned Meeting of the City Council of the City of Avon Park, Florida, held August 12, 1938, at 5:00 o'clock P. M.

Councilmen Will Bennett, L. D. McGiboney, and R. F. Sappington being present, the meeting was called to order by Councilman Sappington, who presided at the meeting and in the absence of the Mayor, was elected Mayor Pro Tem. There were present also at said meeting D. F. Canfield, Acting City Clerk, and T. A. McNicholas, City Attorney.

The following resolution was introduced, and upon being read in full, was, upon motion of Councilman Bennett, which motion was duly seconded by Councilman McGiboney, adopted by the following vote:

Ayes: Will Bennett, L. D. McGiboney, R. F. Sappington.

Nays: None.

Absent: E. W. Hartt and A. McKee Elwell.

Resolution.

Whereas, the City of Avon Park has heretofore adopted a detailed plan for the composition of its bonded indebtedness, and has submitted the same to its creditors affected thereby for the purpose of securing the consent of its said creditors to the filing of proceedings in the United States District Court for the Southern District of Florida under the National Bankruptcy Act as amended, as the same applies to municipal corporations, to the end of effectuating and perfecting the plan of composition; and

Whereas, the creditors of said city affected by said plan owning more than 51 per centum in amount of each class of the securities affected by the plan have accepted in writing said plan of composition; and

Whereas, it is for the best interest of said city and its creditors that said plan be finally approved and put into force and effect; and

Whereas, there has been presented and considered the petition of said City of Avon Park for filing in said United States District Court for the commencement of said proceedings in said Court;

Now, Therefore, Be It Resolved by the City Council of said City of Avon Park, Florida, that said City commence said proceedings in said Bankruptcy Court in accordance with the provisions of said detailed plan of composition of its debts, and in accordance with the provisions of said Bankruptcy Act as amended, and pursuant to the authority vested in said city by Chapter 15,878 of the Laws of Florida of 1933; and that the Mayor Pro Tem and the Acting City Clerk of said City be and they are hereby authorized and directed to sign and seal said petition and the said Mayor Pro Tem to verify the same for and on behalf of said City, and that said petition thereupon be forthwith filed in said United States District Court for the Southern District of Florida.

34 Acceptance of Refunding Plan.

The undersigned creditor of the City of Avon Park, Florida, being the owner and holder of the bonds and/or interest coupons of said City listed and described below, hereby accepts, consents and agrees to the plan of composition of debts of said City of Avon Park, Florida, shown in and by the Refunding Plan submitted to the undersigned and bearing date the 23rd day of April, 1938.

(Upon request of R. E. Crummer & Company, The First National Bank of Chicago is authorized to exhibit the described securities to the United States District Court in which Municipal Bankruptcy proceedings are being brought by the City of Avon Park.)

Dated this 3rd day of May, 1938.

Creditor:

J. O. ADAMS.

Address: 400 Roosevelt Bldg., (Street), Los Angeles. (City), Calif., (State).

Name of Issue	Date of Issue	Maturity Date	Bond Numbers	Interest Represented by Coupons to 7-1-37	Interest not Represented by Coupons to 7-1-37
Gen. Imp. 6%	10-1-26	10-1-56	132/134	$1,260.00	$45.00

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35 The Court entered an order on August 15, 1938, approving the Plan of Composition and appointing Allen E. Walker of Winter Haven, Florida, as Special Master. The order is omitted from this transcript.

Certificate of Publication and mailing of Notices was filed September 23, 1938. Copy of the certificate and proofs of publication are omitted from this transcript.

Petition of the City of Avon Park for stay order was filed on October 8, 1938, said petition being in the following form, to-wit:

36 PETITION.

(Title Omitted.)

Comes now the City of Avon Park, Florida, a municipal corporation, and states that heretofore, to-wit, on the 15th day of August, 1938, said City of Avon Park filed a petition in bankruptcy in this Court praying for a composition of its debts on the basis of a plan submitted therewith, and an order was made on said date providing, among other things, that said plan of composition be temporarily operative with respect to all securities affected thereby, and with respect to the collection and adjustment of taxes affected by the plan; that there are now pending against said city of Avon Park certain suits, to-wit:

In the District Court of the United States, in and for the Southern District of Florida, Tampa Division, the following suits:

Lawrence W. Rittenoure v. City of Avon Park, No. 3371-T-Civil, Final Judgment for $63,352.00 and costs of $12.22, awarded ....., 1936, and alternative writ of mandamus issued thereon June 19, 1936;

Security Benefit Association v. City of Avon Park, No. 3350 T Civil, Final Judgment for $13,294.40 awarded October 11, 1935, and peremptory writ of mandamus issued January 22, 1937. No return to said writ.

United Mutual Life Insurance Company v. City of Avon Park, No. 3349 T Civil, Final Judgment for $13,942.50 awarded October 1st, 1935, and peremptory writ of mandamus issued January 22, 1937, for millage sufficient to pay said judgment;

William E. Sweet v. City of Avon Park, No. 3387 T Civil final judgment for $9952.80 awarded December 16, 1935, and peremptory writ of mandamus issued Janu-
37 ary 22, 1937.

Roger W. Babson v. City of Avon Park, No. 3137 T Civil final judgment for $6,114.82 plus $17.62 costs, awarded May 30, 1933, and peremptory writ of mandamus issued March 15, 1937.

Vermont Investment Company v. City of Avon Park, No. 3451 T Civil, Final Judgment for $34,606.40, plus costs of $17.58, awarded June 4, 1936, and writ of mandamus issued September 10, 1936;

Women's Benefit Association v. City of Avon Park, No. 3351 T Civil, Final Judgment for $29,090.00, plus $12.18 costs, awarded August 2, 1935, and writ of mandamus issued for the levy of 3½ mills on the 1935-1936 tax roll;

And in the Circuit Court of the Tenth Judicial Circuit of Highlands County, Florida, as follows:

Gulf Life Insurance Co. v. City of Avon Park No. ....., Final Judgment for $2,847.67, plus $10.50 costs, awarded April 12, 1934.

Charles B. Prettyman, et al., as Trustees, v. City of Avon Park, No. ....., Final Judgment for $9,778.66, plus costs of $10.75, awarded October 20, 1933, and writ of mandamus issued November 6, 1933, requiring a tax levy to pay said judgment.

First National Bank of Gainesville v. City of Avon Park, No. ....., Final Judgment for $6,610.55, plus $12.25 costs awarded November 10, 1932.

First National Bank of Gainesville v. City of Avon Park No. ....., Final Judgment for $5421.24, plus $11.60 costs awarded April 18, 1933.

And petitioner anticipates that new and additional suits may be instituted against it during the pendency of the bankruptcy proceedings; that in certain of the suits hereinabove mentioned final judgments have been entered and executions issued, and in others of said suits writs of mandamus have been awarded requiring the levy and collection of taxes; that the continuance in force and effect of said judgments and writs prevents the City from operating under the plan of composition as contemplated by the order heretofore made on the 15th day of August, 1938, and as contemplated by the law, pending the final determination of the merits of the said petition and of said plan; that the refunding plan, while by said
38 order made temporarily effective, cannot be completely so unless further proceedings in the suits hereinbefore listed and described are stayed, and unless

the parties plaintiff thereto be enjoined from prosecuting any further proceedings therein.

Wherefore petitioner prays that the Court enter an order staying all actions now pending, as hereinabove described and set forth, and enjoining the institution of any actions hereinafter against the petitioner upon any of the securities involved in said plan of composition, of whatever nature or kind, until the further order of this Court.

T. A. McNICHOLAS,
HENRY L. JOLLAY,
Attys. for Petitioner.

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39 Notice of hearing on petition for stay order was filed October 7, 1938. A copy of said notice is omitted from this transcript.

The petition to vacate stay order and objection to the plan of composition by Roger W. Babson was filed October 14, 1938.

Objections and exceptions by Lawrence W. Rittenoure to the petition for a stay order were filed Oct. 17, 1938. Copy thereof is omitted.

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40 Stay Order was filed October 17, 1938, said order being in the following form, to-wit:

41 ORDER.

(Title Omitted.)

This cause coming on for further hearing on the petition of the City of Avon Park, Florida, debtor, for an order staying all actions and proceedings now pending against